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In the Supreme Court of the United States

October Term, 1976
No. 76-239

JAMES B. BAMFORD, Chairman, DAVID SHIREY, STEWART DE TURK, BOARD OF ASSESSMENT APPEAL, COUNTY OF BERKS,
Petitioners

vs.

DONALD F. GARRETT, SHARON B. GARRETT, VERA A. TURPIN,
Respondents

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF OF PENNSYLVANIA STATE ASSOCIATION OF COUNTY COMMISSIONERS AS AMICUS CURIAE

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MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

Pursuant to Rule 42(3) of the Rules of this Court, Pennsylvania State Association of County Commissioners respectfully moves the Court for leave to file a brief *amicus curiae* in the above-entitled case. Counsel for Respon-

dents has refused to consent to the filing of such brief; the Petitioners have granted their consent.

Pennsylvania State Association of County Commissioners (hereinafter referred to as "Commissioners") is the statutorily authorized organization of all of the commissioners, or their equivalents in home rule counties, of the 67 Counties of the Commonwealth of Pennsylvania. See Act of May 10, 1913, P.L. 199, 16 P.S. §7221, Act of July 28, 1953, P.L. 723, 16 P.S. §3432, and Act of August 9, 1955, P.L. 323, 16 P.S. §440.

At the annual meeting of the Commissioners in Pittsburgh on August 12, 1976, the Association, by unanimous vote, took action to authorize the filing of a brief *amicus curiae* on behalf of each of the 67 Counties of the Commonwealth of Pennsylvania.

As such it is respectfully submitted that under a liberal interpretation of Rule 42(4) giving political subdivisions of a State the right to file briefs *amicus curiae* without consent of the parties, this motion should be granted.

The question presented in the instant case is a matter of utmost importance to each County. If the decision of the Court of Appeals is allowed to stand it will seriously impinge on the ability of the Counties to effectively assess, levy and collect taxes so vitally important if they are to be able to finance the carrying out of essential government functions. It will mean that at any time the entire underpinning of a County's fiscal basis can be thrown in disarray by the filing of a class action suit in the United States courts by a taxpayer alleging 28 U.S.C. §§1981 and 1983 violations.

Because it is so important that Your Honorable Court should afford to Petitioners the right to show why the decision of the Court of Appeals is in error and should be reversed, we feel that in passing upon the petition for writ of certiorari the effect upon and the vital interest to the Commissioners of this matter should be before the Court by our being permitted to file a brief *amicus curiae*.

CONCLUSION

For the above-stated reasons we respectfully urge the Court to grant this motion to file the accompanying *amicus* brief in the present case in support of the position of the Petitioner.

Respectfully submitted,

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BRIEF OF PENNSYLVANIA STATE ASSOCIATION OF COUNTY COMMISSIONERS, AMICUS CURIAE

INTEREST OF AMICUS CURIAE

The interest of Amicus Curiae is set out in the Motion for Leave To File Brief Amicus Curiae.

THE QUESTION PRESENTED

Whether the Court of Appeals erred in finding that the State administrative remedies and judicial review did not provide a plain, speedy and efficient remedy so as to preclude the operation of 28 U.S.C. §1341 prohibiting the United States District Courts from enjoining, suspending or restraining the assessment, levy or collection of any tax under State law.

ARGUMENT

The Remedies Available to Respondents Under State Law and in the State Courts Are Plain, Speedy and Efficient and Thus Under 28 U.S.C. §1341 the District Court Correctly Dismissed for Lack of Subject-Matter Jurisdiction

Introduction

The District Court found that §1341 applied and dismissed the matter for lack of subject-matter jurisdiction. The Court of Appeals reversed and remanded on what we shall show was a narrow interpretation of the administrative remedies available, an erroneous finding as to the availability of State equitable relief, and a limitation on the effect of §1341 inconsistent with the plain meaning of the statute and its uniform interpretation by this Court and the Courts of Appeals.

A.

28 U.S.C. §1341 Prohibits United States District Court Injunctive Relief in State and Local Tax Matters Because Our Federal System Requires That the Vital Internal Fiscal Operations of the States Be Free From Such Interference

In pointing out that the State remedy need not be the best remedy available or even equal to or better than

the remedy available in the federal courts, the District Court states (A. 11) that: "The statute, moreover, codifies the long-standing, deeply rooted principle of federal equitable jurisdiction which restrains the federal courts from interference with the internal fiscal operations of the states. Great Lakes Dredge & Dry Dock Co. v. Huffman, 319 U.S. 293 (1942); Mathews v. Rodgers, 284 U.S. 521 (1932)."

This Court has repeatedly asserted that in the interest of federalism, the federal courts must be reluctant to interfere with the states in their administration of state law. In *Rizzo v. Goode,* 423 U.S. 362 (1976), it was stated (at pp. 378 and 380):

> "Where, as here, the exercise of authority by state officials is attacked, federal courts must be constantly mindful of the 'special delicacy of the adjustment to be preserved between federal equitable power and State administration of its own law.' Stefanelli v. Minard, 342 U.S. 117, 120 (1951) * * *
>
> When a plaintiff seeks to enjoin the activity of a government agency, even within a unitary court system, his case must contend with 'the well-established rule that the Government has traditionally been granted the widest latitude in the dispatch of its own internal affairs', Cafeteria Workers v. McElroy, 367 U.S. 886, 896 (1961), * * *"

Despite the clear enunciation of this Court[1] that federal courts are to resist attempts to have them in-

[1] *Mathews v. Rogers,* 284 U.S. 521, 525, 526 (1932), and *Great Lakes Dredge and Dock Co. v. Huffman,* 319 U.S. 293, 298 (1943).

terfere with the internal operations of the states, the Court of Appeals, while frankly recognizing that its interpretation of the law is not in keeping with "the broad federalism doctrine developed in the judicial decisions" (A. 21), nevertheless has chosen to interpret §1341 as being primarily concerned with injunctions of tax assessments by foreign corporations. We respectfully submit that the plain wording of §1341 makes no such limitation and the courts, including this Court have not so done. It is a cardinal rule of statutory construction that when the words of a statute are clear and unambiguous, the legislative intent is to be derived from the plain meaning of these words and reference to remarks made by individual legislators during the passage of the statute is inappropriate. The Court of Appeals in reaching for support to limit the application of the express words of Congress prohibiting federal injunctions in State tax matters, §1341, an interpretation which it admits has not found favor with the courts, has clearly violated this principle of statutory construction (A. 22-23).

The present case is manifestly one that will create a chaotic situation for the 67 Counties of Pennsylvania appearing here as *amicus curiae* as it will seriously encroach on their "rightful independence" and "interfere by injunction with their fiscal operations." The very thing this Court in *Mathews,* supra, states are the principal reasons why federal equitable relief must be denied (at 284 U.S. 525).

B.

The Administrative Remedies With De Novo Appeal to the State Courts Provide Respondents a Plain, Speedy and Efficient Remedy

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The District Court (A. 5, 6) and the Court of Appeals (A. 29, 30) in their opinions set forth the statutory right of any property holder in Pennsylvania to appeal his assessment to a Board of Assessment Appeals and, if unsatisfied there, to the Court of Common Pleas to be heard *de novo.*

In *Bland v. McHann,* 463 F.2d 21 (5th Cir. 1972), cert. denied 410 U.S. 966 (1973), a case on all fours with the present case, where black property owners alleged discrimination in the assessment of taxes and sought federal injunctive relief, the Court found that the state administrative and judicial review provisions, while not permitting a class action, were, nevertheless, "plain, speedy and efficient" and affirmed the district court's dismissal of the action based on the lack of jurisdiction because of the §1341 prohibition. The state remedies there were in no manner superior to those provided by Pennsylvania law and we respectfully submit that Your Honorable Court, consistent with your denial of certiorari in that case, should grant certiorari here and, after hearing argument, reverse.

The District Court had no difficulty in finding that the state remedies would provide relief akin to a class action suit, stating (at A. 7):

> "* * * we cannot assume that the use, for example, of multiple or mass appeals within and across

neighborhood lines or other possible procedures combined with the ingenuity expected of assessment authorities to reach the inequities, if any, presented and proved, will not obtain a decision on the issues presented notwithstanding facial deficiencies as to the individual taxpayer's remedies in the statute."

Similarly in *Miller v. Bauer,* 517 F.2d 27, 32 (7th Cir. 1975), where the lack of class action relief in the state courts was alleged for the inapplicability of the §1341 prohibition, the Court found the state remedies adequate, stating:

"We find that plaintiffs' contention [that these remedies are inadequate in that there is no provision for a class action] unpersuasive. Since the legal claims of the plaintiffs and their fellow class members are allegedly the same, one suit should be sufficient to determine the constitutionality of the tax. [Citing Mathews v. Rogers, supra]. Moreover, the State Board itself could upon being made aware of the situation through a single claim, order reassessment of the entire area involved . . . We will not assume that the Board would fail to perform its duty under the Constitution or the Indiana statutes."

We respectfully submit there is no indication that the state authorities and the state courts will not, in the handling of Respondents' appeals, adapt their procedures to provide them a plain, speedy and efficient remedy.

C.

Relief in a State Equity Proceeding Is Not Precluded

In response to Respondents' contention that they could not proceed in equity in the Pennsylvania Courts, the District Court, after reviewing the Pennsylvania decisions concluded that: "The particular pitch of this case, we believe is such that it is cognizable in a court of equity in Pennsylvania, despite the contracted scope of equitable jurisdiction." (A. 10, 11) The Court of Appeals in a strained interpretation of Pennsylvania case law found otherwise and reversed partly on the absence or uncertainty of Pennsylvania equity jurisdiction (A. 25-29, 34).

We respectfully submit that it is not essential for a remedy in a matter involving a constitutional challenge to be equitable in nature for it to be an adequate remedy to preclude an injunction proceeding in the federal courts. This Court in *W.E.B. DuBois Club of America v. Clark,* 389 U.S. 309, 311-312 (1967), held that the existence of review by an administrative board precluded its circumvention by an action in a federal district court for injunctive relief. However, we believe that, as the District Court found, equity jurisdiction is not precluded to the Respondents.

The *majority* opinion in *Borough of Greentree v. Board of Property Assessments,* 328 A.2d 819 (1974), clearly holds that the Pennsylvania courts will accept equitable jurisdiction in tax matters where there is a constitutional attack and the statutory-prescribed remedy is inadequate in the circumstances. Therefore, in the present case,

if Respondents can show that "* * * the statutory remedy is pointless or inadequate" (*Greentree*, p. 824), equity jurisdiction is available to them in Pennsylvania.

The Court of Appeals would ignore *Greentree* because only one judge joined in the majority opinion, one judge concurred in the result and one judge, who had also joined in the majority opinion, joined in the concurring opinion. However, the concurring opinion recognizes a broader area of equitable jurisdiction and holds that equity will take jurisdiction in tax matters where there is a constitutional challenge even though there is a statutory remedy and does not require that it be shown to be inadequate. (*Greentree*, pp. 826, 827).

CONCLUSION

We respectfully submit that the Court of Appeals erred in holding that the 28 U.S.C. §1341 prohibition was not intended to apply in a constitutional attack on a taxing statute such as here involved, erred in holding that the statutory remedy was not plain, speedy and efficient, and erred in finding that equitable relief in the Pennsylvania courts would be denied to Respondents. Wherefore, on behalf of the County Commissioners of the 67 Counties of Pennsylvania, whose internal fiscal affairs will be thrown into disarray if the decision is allowed to stand, we join in the petition for writ of certiorari and urge that it be granted.

Respectfully submitted,

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